

FILED
US DISTRICT COURT
DISTRICT OF ALASKA

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

JACK L. EARL, JR.,

Petitioner,

vs.

CRAIG TURNBULL,

Respondent.

Case No. A02-0224 CV (HRH)

**OBJECTION AND REQUEST
FOR CLARIFICATION**

Mr. Earl would rely upon his prior pleading (Response to Court's order at Docket 47) as the basis for objection to the magistrate judge's report, with the following addition, which is specific to the magistrate's recommendation.

The magistrate judge has recommended that claim 4 be dismissed, but that recommendation sweeps more broadly than the district court itself had intended. Claim 4 was originally stated as, "The state trial court erred in denying the defense motion for

56

a mistrial, based upon the distinctive placement of security guards during the testimony of in-custody witnesses.”

A more developed description subsequently was provided in a three page filing, in which it was stated, “Mr. Earl moved for a mistrial based upon the combined prejudice of two events that occurred during the defense case, and which were not attributable to the defendant.” It was this later description which referenced the prejudicial testimony elicited from Cyrus Reape.

The state’s objection to Claim 4 was the expanded description, not the core issue of security guard placements, which was preserved and presented to the state Supreme Court.

As Mr. Earl understands it, the court is proposing and preparing to dismiss only that aspect of Claim 4 which is based upon Mr. Reape’s testimony. If the undersigned has misunderstood the court’s intent, then she respectfully requests an opportunity to further respond. The undersigned will be on leave from December 19 through January 2.

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DATED this 15th day of December, 2005.

Respectfully submitted,

FEDERAL PUBLIC DEFENDER
FOR THE DISTRICT OF ALASKA




Mary C. Geddes
Assistant Federal Defender

Certification:

I certify that on December 15, 2005,
I mailed a copy of this document to:

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Lenora L. Roehling